

Applicant : Riccardo Dalla Favera
Serial No.: 09/724,254
Filed : November 28, 2000
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In response, applicant hereby elects with traverse Group III, claims 43-47, for prosecution at this time. Applicant also elects the species of IRTA2 nucleic acid for prosecution at this time.

REMARKS

Applicant, however, respectfully requests that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application.

The inventions of group I-III are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The inventions of Groups I-III all relate to new Immunoglobulin Receptor Translocation Associated (IRTA) proteins. Applicant therefore maintains that Groups I-III are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction were not

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required.

Applicant respectfully submits that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups I and II would not require a serious burden once the prior art for Group III has been identified.

Therefore, there is no burden on the Examiner to examine Groups I-III together in the subject application. Hence, the Examiner must examine the entire application on the merits.

In view of the foregoing, applicant maintains that restriction is not proper under 35 U.S.C. §121, and respectfully requests that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone them at the number provided below.

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No fee, other than the \$55.00 extension fee, is deemed necessary in connection with this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this
correspondence is being transmitted
this date by facsimile to:

Assistant Commissioner for Patents,
Washington, D.C. 20231

Alan J. Morrison
Reg. No. 37,399

Date

12/23/02

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